

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

MASIONGALE ELECTRICAL-MECHANICAL, INC.
Employer

and

Case 25-RC-9761

INDIANA STATE PIPE TRADES ASSOCIATION AND
U.A. LOCAL 661, AFL-CIO
Petitioner

THIRD SUPPLEMENTAL DECISION ON
CHALLENGED BALLOTS AND ORDER

Pursuant to a Petition filed on March 4, 1998 and a Decision and Direction of Election issued on April 17, 1998, an election was conducted by mail ballot on May 14, 1998 among certain employees of the above-named Employer to determine whether or not they desired to be represented by the Petitioner for the purposes of collective bargaining.¹

At the count of the mail ballots, the Board Agent challenged 21 ballots because the names of the individuals were not on the *Excelsior* list submitted by the Employer.² Of those 21 individuals, nineteen, Anthony Wayne Bane, Joseph Beatson, Michael Bowen, Rodney Boyle, Christine Brittan, Jeryl Cooke, Mark Darnell, William Fortwenger, Charles Gates, Duane Harty, Roger Hodson, Jeff Jehl, Edward Meinzen, Bruce Morehous, Jack Neal, Jr., James Poulson, Merlin Rice, William Rogers, and Stacy Stockton, were subsequently found by the Board to be discriminatees in *Masiongale*

¹ The appropriate unit as set forth in the Decision and Direction of Election is as follows:

All full-time and regular part-time plumbers, plumber helpers, HVAC employees, electrical employees, shop employees and lead persons employed by the Employer; BUT EXCLUDING the Equipment Manager/Safety Coordinator, all truck drivers, mechanics, data communications and computer employees, office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

² In addition to the individuals whose names were on the Excelsior list prepared and submitted by the Employer, the Region also sent mail ballots to employees on a list of individuals submitted by the Petitioner that the Petitioner claimed were eligible voters who were not included on the Excelsior list.

Electrical-Mechanical, Inc., 331 NLRB 534 (2000), and *Masiongale Electrical-Mechanical, Inc.*, 337 NLRB 42 (2001), as upheld by the Court of Appeals for the Seventh Circuit in *Masiongale Electrical-Mechanical, Inc. v. N.L.R.B.*, 323 F.3d 546 (2003). The Petitioner challenged the ballots of 4 individuals contending that those 4 individuals were supervisors within the meaning of Section 2(11) of the Act and thus were not eligible to vote in the election. The Petitioner also challenged the ballot of one individual on the basis that she had ended her employment with the Employer prior to the election. Finally, the ballots of two individuals were challenged by the Board Agent because their ballots were received by the Regional Office after the established and published cutoff date for submission of the mail ballots. The challenged ballots are sufficient in number to affect the results of the election.³

In a Supplemental Decision and Order issued on October 2, 1998, Regional Director Roberto G. Chavarry ordered that the resolution of all challenged ballots be held in abeyance pending the disposition of the above-cited unfair labor practice cases. Compliance with the Court Judgment in the above cases was achieved in 2004, and the investigation of the challenges was then resumed.

Following an investigation of the issues raised by the challenges, the Regional Director of Region Twenty-five issued his Second Supplemental Decision on Challenged Ballots, Order, and Notice of Hearing. In his Second Supplemental Decision the Regional Director ordered that a hearing be conducted before a hearing officer to resolve the issues of fact and credibility raised by the challenges to the ballots of Anthony Wayne Bane, Joseph Beatson, Michael Bowen, Rodney Boyle, Christine Brittian, Jeryl Cooke, Mark Darnell, William Fortwenger, Charles Gates, Duane Harty, Roger Hodson, Jeff Jehl, Edward Meinzen, Bruce Morehous, Jack Neal, Jr., James Poulson, Merlin Rice, William Rogers, Stacy Stockton, Mary Gerstorff, Timothy Hayes, Tim Reed, William Weber, Lana Hobbick, Kevin Smekens, and Richard Whiteside⁴.

³ The Tally of Ballots made available to the parties at the conclusion of the election shows the following results:

Approximate number of eligible voters	77
Number of void ballots	4
Number of votes cast for the Petitioner	24
Number of votes cast against participating labor organization	36
Number of valid votes counted	60
Number of challenged ballots	28
Number of valid votes counted plus challenged ballots	88

⁴ The remaining two ballots challenged by the Board Agent due to the voters not appearing on the Excelsior list were cast by Carlos Erby and Gary Gravit. In the Second Supplemental Decision on Challenged Ballots, Order and Notice of Hearing, the Regional Director sustained the objections to these two ballots.

Pursuant to that order, a hearing was conducted on April 13, 2005, in Muncie, Indiana before Hearing Officer Michael Beck. On August 25, 2005 Hearing Officer Beck issued his Hearing Officer's Report on Challenged Ballots and Recommendations to the Regional Director, recommending that the challenges to the ballots of Anthony Wayne Bane, Joseph Beatson, Michael Bowen, Rodney Boyle, Christine Brittian, Jeryl Cooke, Mark Darnell, William Fortwenger, Charles Gates, Duane Harty, Roger Hodson, Jeff Jehl, Edward Meinzen, Bruce Morehous, Jack Neal, Jr., James Poulson, Merlin Rice, William Rogers, Stacy Stockton, Mary Gerstorff, Timothy Hayes, Tim Reed, William Weber, Lana Hobbick, Richard Whiteside, and Kevin Smekens be overruled, and their ballots be opened and counted and that a revised Tally of Ballots be issued to all parties.

On September 29, 2005, the Employer filed exceptions to the Hearing Officers recommendations with regard to the ballots of Anthony Wayne Bane, Joseph Beatson, Michael Bowen, Rodney Boyle, Christine Brittian, Jeryl Cooke, Mark Darnell, William Fortwenger, Charles Gates, Duane Harty, Roger Hodson, Jeff Jehl, Edward Meinzen, Bruce Morehous, Jack Neal, Jr., James Poulson, Merlin Rice, William Rogers, Stacy Stockton, and Kevin Smekens. No exceptions were filed to the Hearing Officer's recommendations regarding the ballots of Mary Gerstorff, Timothy Hayes, Tim Reed, William Weber, Lana Hobbick, and Richard Whiteside. I have carefully reviewed the record evidence which form the basis for the Hearing Officer's Report on Challenges and Recommendations to the Regional Director, as well as the Employer's exceptions thereto. For the reasons contained therein, I affirm and adopt as my own the Hearing Officer's findings, conclusions, and recommendations to the undersigned.

ORDER

Accordingly, based upon the findings and conclusions set forth in the Hearing Officer's Report on Challenges and Recommendation, IT IS HEREBY ORDERED that:

1. The challenges to the ballots of Anthony Wayne Bane, Joseph Beatson, Michael Bowen, Rodney Boyle, Christine Brittian, Jeryl Cooke, Mark Darnell, William Fortwenger, Charles Gates, Duane Harty, Roger Hodson, Jeff Jehl, Edward Meinzen, Bruce Morehous, Jack Neal, Jr., James Poulson, Merlin Rice, William Rogers, Stacy Stockton, Mary Gerstorff, Timothy Hayes, Tim Reed, William Weber, Lana Hobbick, Richard Whiteside and Kevin Smekens be overruled and their ballots be opened and counted, at a time and place to be designated by the Regional Director;
2. A Revised Tally of Ballots shall be served on the parties and appropriate certification shall issue.

APPEAL PROCEDURE

Under the provisions of Sections 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Third Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in

Washington, D.C. by **January 24, 2006**. A copy of the request for review should be simultaneously served upon each party and upon the Regional Director.

DATED at Indianapolis, Indiana this 10th day of January, 2005.

Rik Lineback
Regional Director
Region 25, National Labor Relations Board
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RL/jcm

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